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In the
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF AMICI CURIAE The Illinois Association of Chiefs of Police and the Major Cities Chiefs Association IN SUPPORT OF PETITIONER

JAMES G. SOTOS
Counsel of Record
DANA M. SHANNON
HERVAS, SOTOS, CONDON & BERSANI, P.C.
333 Pierce Road, Suite 195
Itasca, Illinois 60143
(630) 773-4774

ILLINOIS ASSOCIATION OF CHIEFS OF POLICE
426 South Fifth Street
Suite 200
Springfield, Illinois 62701
(217) 523-3765

MAJOR CITIES CHIEFS ASSOCIATION
201 North Charles Street
Suite 310
Baltimore, Maryland 21201
(410) 433-8909

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

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INTEREST OF AMICI CURIAE[1]

The Illinois Association of Chiefs of Police ("IACP") is a voluntary professional organization comprised of over 800 members from jurisdictions across Illinois. Those jurisdictions include law enforcement executives from large urban centers employing thousands of police officers, to law enforcement executives in small, rural municipalities with only a few officers. Most IACP members are active members of law enforcement, many of whom are responsible for ensuring that vehicle checkpoints within their jurisdictions operate within legal parameters. In addition, IACP members include legal advisors who counsel law enforcement officers and administrators on such issues, including the formulation of policy on the subject. IACP members are committed to the best interests of their respective communities and the law enforcement profession.

The Major Cities Chiefs Association ("MCC") is a professional organization of police executives representing the 59 largest cities or jurisdictions in the United States and Canada. Representation in the United States exceeds 200,000 law enforcement personnel serving a population in excess of 47 million. The MCC provides a forum for urban police chiefs, sheriffs, and other law enforcement chief executives to discuss common problems, to share information and problem-solving strategies, and to articulate the public safety needs of large cities in the formulation of criminal justice policy. The MCC is dedicated to the advancement of research, legislation, policy and

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than the IACP or the MCC, their supporters, and their counsel, made a monetary contribution to the preparation and submission of this brief.

programs that ensure the safety of our citizens and the officers that protect them.

Because of the direct relationship between IACP and MCC members and the daily activities of law enforcement across the United States, amici have firsthand knowledge of the practical impact of the Illinois Supreme Court's ruling in this case, and are therefore in a unique position to impart their knowledge to this Court. The IACP and the MCC believe that their views will aid this Court in the resolution of the issues raised in the present appeal. The IACP and the MCC submit this brief in support of petitioners and with the consent of the parties. Letters of consent have been filed with the clerk of the Court.

SUMMARY OF ARGUMENT

The Illinois Supreme Court's opinion in this case was premised upon a misunderstanding of the vehicle checkpoint during which Robert Lidster was apprehended, and an overbroad interpretation and application of this Court's decision in City of Indianapolis v. Edmond, 531 U.S. 32 (2000). Edmond held that vehicle checkpoints designed to discover drug-related offenses violated the Fourth Amendment because the purpose of the checkpoints, which were part of a generalized effort to discover drug-related crimes, was indistinguishable from a general interest in crime control.

By contrast, the checkpoint in the instant case was not part of a generalized scheme to detect crimes nor was it designed to search for evidence of illegal activity. Instead its primary purpose was to impart information about a crime to potential witnesses who might have pertinent information to provide to police. The difference is critical. While the latter situation fits within this Court's limited exceptions to the rule that a seizure is unreasonable absent individualized suspicion, the former situation, with its primary purpose of intercepting general criminal wrongdoing, violates the Fourth Amendment.

The Illinois Supreme Court's ruling threatens to restrict the effectiveness of law enforcement efforts nationwide. Under facts such as those present here, checkpoints have traditionally been effective means to alert citizens to crime, and to in turn procure information. Citizens are often the only witnesses to crimes, or, the sole source that will lead to discovery of other information about a crime. If police cannot reach out to the public in this simple manner for assistance, then law enforcement efforts will be significantly hindered.

The vehicle checkpoint at issue here is important not only for its effectiveness in alerting the public to crime and possibly garnering leads in specific cases, but also for its contribution to furthering highway safety. In particular, amici assert that checkpoints instituted in serious and unsolved vehicle crimes are essential to highway safety.

There is no sound basis for the view that upholding the vehicle checkpoint in this case will lead to a proliferation of such stops. Our members report that informational checkpoints are not widely or indiscriminately employed, both as a practical matter and because of concern about intrusions upon the public.

The limiting of law enforcement use of checkpoints solely for traffic safety and not for the more critical law enforcement purposes is unwarranted. Such a construction leaves no room for law enforcement use of checkpoints to combat terrorism and promote more general interests of transportation security. Moreover, such a construction is inconsistent with currently federally mandated checkpoints for security at the nations airports when homeland security levels are increased. Based on the foregoing, amici urge this Honorable Court to reverse the decision of the Illinois Supreme Court.

ARGUMENT

THE ILLINOIS SUPREME COURT'S DECISION ERADICATES A LEGITIMATE LAW ENFORCEMENT TOOL

Although statistics on the use and effectiveness of vehicle checkpoints by law enforcement are not readily available, in the opinion of the amici, vehicle checkpoints such

as that used in the instant case are critical to effective law enforcement. As discussed infra, informational checkpoints employed under the circumstances present here are akin to canvassing for possible witnesses in the area of a crime, which is an important and accepted law enforcement technique. Moreover, vehicle checkpoints are essential in traffic fatality cases to advance highway safety. Additionally, although vehicle checkpoints of the type present here are of paramount importance to law enforcement, in practice such checkpoints are used sparingly and there is no need for concern that they will become routinely employed. Finally, permitting use of checkpoints solely for the narrow law enforcement purpose of traffic safety adversely impacts other more critical law enforcement interests.

A. Vehicle Checkpoints Designed To Inform The Public Of A Specific Crime And To Procure Witnesses Or Leads Are Constitutional And Necessary

Canvassing of possible witnesses in an area where a crime has occurred is an accepted law enforcement technique. See, e.g., Florida v. Royer, 460 U.S. 491 (1983) (plurality opinion) (police do not violate Fourth Amendment by approaching person in public place and eliciting voluntary answers to questions regarding a crime). Similarly, vehicle checkpoints, instituted for the purpose of locating possible witnesses to a traffic fatality, are integral to effective law enforcement. By misconstruing the purpose of the checkpoint employed by police in the instant case, and by erroneously interpreting and applying this Court's decision in City of Indianapolis v. Edmond, 531 U.S. 32 (2000), the Illinois Supreme Court deemed unconstitutional a necessary type of vehicle checkpoint. As a consequence of the Illinois Supreme

Court's decision, a vital instrument of law enforcement has been struck down under circumstances vastly different from those present in Edmond.

The Edmond holding does not speak to "intrusions aimed primarily at purposes beyond the general interest in crime control." 531 U.S. at 48. Unlike the fishing expedition for narcotics crimes present in Edmond, the checkpoint here was essentially an information-distribution process. The primary purpose was to impart information about a hit-and-run fatality to persons who might have information to provide to police.

Thus, unlike Edmond, the checkpoint was not part of a generalized scheme to detect crimes or discover evidence of ongoing illegal activity. For example, it did not include a visual inspection of vehicles for front end damage or other evidence of an accident. The checkpoint did not exist to catch possible offenders within its net, such as Robert Lidster or the hit-and-run driver. Instead, its purpose was to ask for the public's help in the investigation of an existing offense, and to possibly receive information that would assist in identifying the offender.

Certainly, the checkpoint in this case was a seizure within the meaning of the Fourth Amendment. See Edmond, 531 U.S. at 37, 40. It satisfies the requirement of reasonableness, however, because it served the State's interest in solving a fatal crime, the nature of the intrusion was minimal, and the checkpoint was an effective method of advancing the State's interest. See Brown v. Texas, 443 U.S. 47, 50-51 (1979). Each vehicle was stopped for 10-15 seconds. No searches were conducted, nor were licenses or insurance cards requested. The officers did not ask the drivers for their names, and occupants were not checked for seatbelt violations.

Moreover the timing and location of the checkpoint were tailored to increase the likelihood of locating witnesses.

Just as it is proper for police to approach pedestrians on the street to inform them of criminal activity and to ask questions, our members likewise view it as proper to conduct a brief vehicle checkpoint in the area of a crime, at a time and under circumstances designed to encounter persons likely to have information. Moreover, it is important to do so because once witnesses leave an area, police may not be able to locate them again. In the experience of IACP and MCC members, checkpoints are in some cases the only method of potentially locating witnesses to a crime. Indeed in many criminal cases, citizens are often the only witnesses to a crime, or, the sole source that will lead to discovery of other information about a crime. Thus, if police cannot reach out to the public in this simple manner for assistance, then law enforcement efforts will be greatly hindered.

Under facts such as those present here, checkpoints have traditionally been legitimate and expeditious means to alert citizens to a crime that has been committed, and to seek information. Performing vehicle stops near the scene of an accident and distributing informational flyers as a practical matter significantly increases the likelihood of eliciting leads and solving crimes that have already occurred. The Illinois Supreme Court's ruling threatens to restrict the effectiveness of law enforcement efforts statewide. That restriction on law enforcement will spread nationwide should this Honorable Court choose to affirm the Illinois Supreme Court's decision. The members of the IACP and MCC strongly urge this Honorable Court to find vehicle checkpoints constitutional under the present scenario.

B. Informational Vehicle Checkpoints Further Highway Safety

Our members report that handing out flyers at vehicle checkpoints has proven useful in a variety of cases, including homicide, sex crimes, kidnapping and robbery. In particular however, IACP and MCC members report that vehicle checkpoints such as those instituted by the Lombard Police in this case are of foremost importance in maintaining highway safety and therefore are keenly useful in fatal accident cases. Our members concur that unless law enforcement may permissibly canvass a mobile population soon after a hit-and-run accident under the circumstances present here, the ability to solve fatal highway crimes will be profoundly diminished and often defeated.

Indeed, this Court has recognized that highway safety is a legitimate interest that may justify vehicle checkpoints. In Edmond this Court expressly noted that its opinion did not overrule its previous decisions approving the constitutionality of the vehicle checkpoints considered in Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990), or United States v. Martinez-Fuerte, 428 U.S. 543 (1976). Edmond, 531 U.S. at 47. Sitz held that highway sobriety checkpoints with brief, suspicionless seizures designed to combat drunk driving were constitutional. Sitz, 496 U.S. at 447-451. Likewise, Martinez-Fuerte held that stops at permanent immigration checkpoints near the United States border with Mexico were constitutional. Martinez-Fuerte, 428 U.S. at 561-564.

This Court further acknowledged in Edmond that its opinion did not alter its pronouncement in Delaware v. Prouse, 440 U.S. 648 (1979). Edmond, 531 U.S. at 47. While in Prouse this Court invalidated a discretionary spot-check of a motorist's

driver's license and registration, it nonetheless suggested that "[q]uestioning of all oncoming traffic at roadblock-type stops," would be a lawful avenue to serve the interest in highway safety. Prouse, 440 U.S. at 663. Moreover, in Prouse this Court noted that the purposes of such a roadblock are distinguishable from a purpose of generally investigating crime. Edmond, 531 U.S. at 39.

Edmond instructs that "the common thread of highway safety" runs through this Court's decisions in Sitz and Prouse, and that Prouse highlights the significant difference between highway safety versus general crime control interests. 531 U.S. at 40. Even a cursory reading of Edmond, Sitz and Prouse suggests that the vehicle stops here were constitutionally permissible. Not only was the checkpoint instituted in response to a particular roadway crime, but an underlying purpose of the stops was to further roadway safety by solving the crime. To strike down vehicle checkpoints under the circumstances present here would negatively impact highway safety across the United States, and therefore amici request that this Court reverse the decision of the Illinois Supreme Court.

C. In Practice, Informational Vehicle Checkpoints Are Invoked Infrequently

The Illinois Supreme Court denounced the informational checkpoint here in part because it believed that failure to do so would potentially "make roadblocks 'a routine part of American life.'" People v. Lidster, 202 Ill.2d 1, 9 (Ill. 2002), quoting Edmond, 531 U.S. at 42. As the Lidster dissent notes, however, such a result is unlikely, given that police manpower and resources are limited. Lidster, 202 Ill.2d at 23. Moreover, even where informational checkpoints are used by law enforcement, they will nonetheless be subject to the three-prong

reasonableness test of Brown v. Texas, 443 U.S. 47, 50-51 (1979). Lidster, 202 Ill.2d at 23.

Our members report that although vehicle checkpoints such as those in the instant case are viewed as critical, they are not invoked indiscriminately nor routinely. In fact the experience of many members is to use such checkpoints only in cases where an unsolved crime involves a matter of grave public concern, such as a child abduction or a fatal hit-and-run. Not only is a limited use of informational checkpoints necessary from the standpoint of resources and manpower, but, our members inform us that they are mindful of the need not to appear intrusive to the public, and therefore, they wish to reserve such contact for occasional use. Based on the foregoing, as a practical matter and out of respect for the public, the Illinois Supreme Court's concern about a proliferation of vehicle checkpoints is unfounded.

D. Narrow Limits on Checkpoints Adversely Impact Important Law Enforcement Interests.

Amici believe that if the interests of traffic safety warrant the imposition of checkpoints, more weighty law enforcement interests should also warrant the use of such checkpoints. For example, our members advise us that in the area of combating terrorism and providing for homeland security, vehicle inspection checkpoints are currently established at the direction of the federal government. The Department of Homeland Security's Transportation Security Administration, has directed airports to utilize local law enforcement to establish vehicle checkpoints on access roads to airports when the Homeland Security Advisory System (HSAS) condition Orange is reached. To date, these directions have been issued and are

given in the form of security directives which have been effective only during (HSAS) condition Orange.

Creating a security perimeter at transportation hubs, like airports, is a key component to the security of those facilities. Establishing checkpoints is an efficient way to increase the security of that perimeter against vehicles which may carry large explosive devices. Moreover the establishment of visible checkpoints serves to enhance public confidence in the safety of the transportation system as well as deter against terrorist threat.

In all respects those checkpoints established at airports meet the substantive requirements of Sitz. They are of short duration and limited intrusiveness-designed only to monitor for large explosive devices. The checkpoints established at airports are highly visible. Moreover, motorists have the ability to avoid them. While these checkpoints are not in the nature of general crime control, they are also not, strictly speaking, in the nature of highway safety. A reading of the Edmond opinion consistent with that provided by the Illinois Supreme Court casts doubt on the constitutionality of such practices.

It seems anomalous to amici to permit law enforcement to establish checkpoints for highway safety but not the more critical law enforcement goals of combating terrorism and securing the nation's transportation system. Because the Illinois Supreme Court decision is based on reasoning which would compel such a result, we respectfully request reversal of that court's decision.

CONCLUSION

For the reasons discussed herein and in the brief of Petitioner, amici respectfully request that this Honorable Court

reverse the decision of the Illinois Supreme Court, and hold that on the basis of its precedent and sound judicial policy, the vehicle checkpoint in this case did not violate the Constitution.

Respectfully submitted,

JAMES G. SOTOS
DANA M. SHANNON
HERVAS, SOTOS, CONDON & BERSANI, P.C.
333 Pierce Road, Suite 195
Itasca, IL 60143-4109
(630) 773-4774